

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

v.

DAWANE ARTHUR MALLET,

Movant.

No. 2:02-cr-0416 TLN AC

ORDER

Movant, a federal prisoner proceeding pro se on a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, has filed a motion to disregard the government's response to his § 2255 motion on the ground that respondent did not comply with Local Rule 5-5. ECF No. 470.

This district does not have a Local Rule 5-5, and it appears that movant may be referring the Local Rules for the United States District Court for the Northern District of California. The Northern District's Local Rule 5-5 provides for the form of a certificate of service and that the court may disregard a document not accompanied by such a certificate "if an adverse party timely objects on the ground of lack of service."¹ Although this court's Local Rule 135(c) and Federal

¹ The Local Rules for the United States District Court for the Northern District of California can be found on that court's website at <https://cand.uscourts.gov/rules/civil-local-rules/> [<https://perma.cc/YZ3L-NXDM>].

1 Rule of Civil Procedure 5(d)(1)(B)(i) require a certificate of service, neither includes a
2 comparable sanction for failure to comply. Although it appears that respondent in this case failed
3 to include a certificate of service with the opposition to movant's § 2255 motion, the court does
4 not find it appropriate to strike the opposition on this ground. However, since it is unclear
5 whether movant's complaint is simply that the opposition was not accompanied by a certificate of
6 service, or whether he did not receive a copy of the opposition and is merely acting on the
7 assumption one was filed, respondent will be required to re-serve the opposition and to file the
8 certificate of service.


9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Movant's motion to disregard respondent's opposition to his § 2255 motion (ECF No.
11 470) is DENIED;

12 2. Within seven days of the service of this order, respondent shall re-serve its opposition
13 to the § 2255 motion (ECF No. 460) and file a certificate of service showing when the opposition
14 was re-served; and

15 3. Movant shall have twenty-one days from the re-service of the opposition to file a reply
16 in support of his § 2255 motion.

17 DATED: June 3, 2025

18 
19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE
21
22
23
24
25
26
27
28